tional provision, a statutory enactment, to be valid, must afford absolute immunity against future prosecution for the offence to which the question relates."

In the course of the opinion the court considers the provisions of the Massachusetts Constitution, that the witness shall not be "compelled to accuse, or furnish evidence against, himself," and of the New York Constitution, which is in the same language as that of the Fifth Amendment. The conclusion is reached that inasmuch as the general purpose of these constitutional provisions is to prohibit compulsory self-accusatory evidence, "the liberal construction which must be placed upon constitutional provisions for the protection of personal rights would seem to require that the constitutional guaranties, however differently worded, should have, as far as possible, the same interpretation," and that "there is really, in spirit and principle, no distinction arising out of such difference of language."

TROVER FOR CONVERSION BEFORE PLAINTIFF'S TITLE HAS ACCRUED.— The case of *Bristol and West of England Bank* v. *Midland Railway Co.* [1891], 2 Q. B. 253, offers food for reflection. The proposition which it would seem that the Court of Appeal intended to lay down, is that an action of trover or detinue will lie against a bailee for non-delivery of goods, even though they have been wrongfully disposed of to a third party before the plaintiff's title accrued.

Considering the case first as an action of trover, the proposition is certainly startling that A, who has got title to goods, can demand them from, and on refusal sue for conversion, B, who has never had them in his possession since the plaintiff owned them. Opposed to such a contention is Lord Blackburn's dissenting opinion in *Goodman* v. *Boycott*, 2 B. & S. 1, and a statement in Clerk & Lindsell on Torts, p. 183, that "there cannot be a conversion by demand and refusal, unless at the time of the demand the defendant had it in his power to return the property."

The decision might be sustained on the authority of *Franklin* v. *Neate*, 13 M. & W. 481 (a case of judicial legislation founded on no principle), that a purchaser from a bailor may proceed in his own name against a bailee. This seems to be the ground of Lord Coleridge's decision in the Queen's Bench, but Lord Justice Lindley prefers to rest the case on a different principle. Moreover, an examination of the case seems to indicate clearly that the conversion sued on is not the wrongful disposal of the goods while the bailor retained title, but a conversion arising from the refusal of the plaintiff's demand to produce chattels converted before he had any interest in them. Further, if the action were founded on the earlier act of conversion, the plaintiff would be liable to be met by all the defences which could be raised against his assignor,—a possibility certainly not contemplated by the court.

The ground of the decision in the Court of Appeals—and it meets with the approval of Sir F. Pollock—is the broad principle that "a man who wrongfully parts with goods is liable as if he had them still in his possession. *Qui dolo desiit possidere pro possidente damnatur.*" Reducing this to its lowest terms would seem to bring it down to that shifty thing, estoppel; and what is the estoppel? The answer must be

that the plaintiff has been induced to purchase relying on the representation arising from every contract of bailment, that the bailee will be true to his promise to keep the goods in his possession. But is this satisfactory? Through how many transfers, and for what period of time, will the court apply this rule and say that the statute has not been running in favor of the defendant although it has for the benefit of his assignees? Moreover, the inquiry suggests itself, after an act of conversion, can a subsequent demand and refusal constitute a fresh conversion?

Regarding the action as one of detinue, the decision is no more satisfactory; for the action, if detinue *sur trover*, must be based on the demand and refusal, and the difficulty suggested above recurs, namely, that since the goods have been the plaintiff's the defendant has never had them. If the gist of the action is detinue *sur bailment*, then the contract from the breach of which the action arises is that made with the plaintiff's assignor, but for the assignee to maintain the action in his own name is indefensible, on principle. Besides, as was said before, it is clear that the court considered that the right which the plaintiff is seeking to enforce is not that derived from the assignment, but one which is original with himself.

LECTURE NOTES.

[The following note was prepared by Professor Gray and read by him to the third-year class in connection with the case of *Wilkinson* v. *Duncan*, p. 661 of Vol. V. of the Cases on Property.]

REMOTENESS OF SEPARABLE GIFTS. — Since *Griffith* v. *Pownall*, 13 Sim. 393 (1843), it has been settled that if the persons to whom a devise or legacy is made are described as a class, but the amount of the gift to each member of the class is in no way affected by the gift to any other, then the gifts are separable, and some may be valid though others are too remote. Thus a legacy of $1,000 to each of the testator's grandchildren who reaches twenty-five is a valid gift to all the grandchildren who are alive at the testator's death, although it is not a good gift to those who are then unborn.

The case of *Wilkinson* v. *Duncan*, 30 Beav. 111 (1861), has generally been cited as an illustration of this principle, but without sufficient attention to its facts. In that case property was given upon trust for G for life, and on G's death to such of his children, and in such manner, as he should appoint. G appointed $2,000 to each of his daughters on reaching twenty-four. He had four daughters, three over and one under three years of age. (See 7 Jur. N. S. 1182.) It is not distinctly said that none of the daughters were alive at the time of the creation of the power, but as no reference was made to such a fact, and as the power was created twenty-three years before its execution, it may be assumed that none of the daughters were then born. Sir John Romilly, M. R., held that the gifts to those daughters who were over three years old at their father's death were not too remote.

Let us consider the case first as if it were a direct gift; that is, suppose the testator had given $2,000 to each one of G's daughters who should reach twenty-four, and as the gifts to the daughters are independent, let us consider separately the gift to a particular daughter, whom we will call X. In order that X shall take, what must happen? X must be born and she must reach twenty-four years of age. It is not certain that she will be born until just before the death of her